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Ad Hoc Committee for the Negotiation of a Convention against Corruption
Third session
Vienna, 30 September-11 October 2002
Item 3 of the provisional agenda*
Consideration of the draft United Nations Convention against Corruption, with particular emphasis on articles 1-39

Proposals and contributions received from Governments

Lebanon: amendments to articles 1 and 2

1. Lebanon proposes that the amendments below be made to articles 1 and 2 of the revised draft United Nations Convention against Corruption (A/AC.261/3/Rev.1).

Article 1: Statement of purpose

Subparagraph (a)

2. [The proposal concerns the Arabic version only.]

Subparagraph (b)

3. [The proposal concerns the Arabic version only.]

Article 2· Definitions [Use of terms]

Option 1 of subparagraph (a)

4. Lebanon proposes that the words "or public enterprise" be replaced with the words ", public enterprise, a public institution, an institution shared by the public sector and the private sector or an independent department".

* A/AC.261/8.

V.02-56353 (E)

Option 2 of subparagraph (a)

5. It is proposed that the words "and a public utility, as defined" be replaced with the words ", a public utility, a public institution, an institution shared by the public sector and the private sector, or an independent department, as defined".

Subparagraph (h)

6. Lebanon proposes that the words ", rights or privileges" be added to this subparagraph, so that it reads:

"(h) 'Proceeds of crime' shall mean any property, rights or privileges derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with this Convention;"

Subparagraph (n)

7. Lebanon proposes that the words "or of institutions shared by the public sector and the private sector" be added to the subparagraph, so that it reads:

"(n) 'Public function' shall mean any temporary or permanent, paid or honorary activity performed by a natural or legal person in the name of the State or in the service of the State, its institutions or institutions shared by the public sector and the private sector and run by the State, at any level of hierarchy;"

Subparagraph (p)

8. Lebanon proposes that the words "or is based on notional or imaginary contracts or transactions" should be added to this subparagraph, so that it reads:

"(p) 'Suspicious transaction' shall mean any unusual transaction that, by reason of its amount, characteristics and periodicity, is inconsistent with the customer's business activity, exceeds the normally applicable parameters of the market, has no clear legal basis or is based on notional or imaginary contracts or transactions and could constitute or be connected with unlawful activities in general;"

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Turkey: amendments to articles 6, 7, 29 and 32

Article 6: Public sector

New paragraph

1. The following new paragraph should be added at the end of the article:

"4. Each State Party shall take all measures necessary to ensure transparency in all public acts and actions. In this context, they shall establish institutional bodies to set public auditing standards, to make public auditing more acceptable as a profession, placing special emphasis on performance auditing, and to put into force legislation on ensuring free access to information."

Article 7: Code of conduct for public officials

New paragraph

2. The following new paragraph should be added at the end of the article:

"9. Each State Party shall adopt such legislative or other measures as may be necessary to ensure that all discretionary powers given to public officials are exercised in accordance with objective criteria, in order to prevent the misuse of such discretionary powers."

* A/AC.261/8.

V.02-56359 (E)

Article 29: Other criminal offences

New subparagraph of option 2

3. The following new subparagraph should be added after subparagraph (c) of option 2:

"(d) Each State Party shall consider adopting such legislative or other measures as may be necessary to establish as criminal offences all acts of discrimination in the public sector in favour of certain persons based on family ties (nepotism), personal friendship (cronyism) or political alignment (patronage)."

Article 32: Criminalization of corruption in the private sector

New paragraph of option 1

4. The following new paragraph should be added after paragraph 2 of option 1:

"3. Each State Party shall consider adopting legislative measures to ensure that high-level officials of a private sector institution are punished with the penalties foreseen for the crime of embezzlement by public officials under similar circumstances whenever the private sector institution concerned is conducting a financial activity or whenever the acts committed by such private sector officials affect public economic interests. The private sector institutions covered by this article should include, but should not necessarily be limited to, banks and private finance institutions operating in the areas of borrowing and utilization of money, assets or instrumentalities belonging to private persons."

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Mexico: amendments to article 21

Mexico proposes to amend article 21 to read as follows:

"*Article 21*

"*Criminalization of trading in influence [Criminalization of influence-peddling]*

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence trading in influence, which shall be understood as:

"(a) Any act performed by a public official on his or her own account or through a third party to promote or to procure the illicit processing or negotiation of public transactions that do not pertain to the duties inherent to his or her public office; and

"(b) Any act by any person to promote the illicit conduct of a public official or abet the processing or negotiation referred to in paragraph (a) of this article."

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Proposals and contributions received from Governments

Belarus: amendments to articles 1-3, 4 bis-8, 19-34, 36 and 38

Article 1: Statement of purpose

Subparagraph (a)

1. In subparagraph (a), the words "To promote and strengthen measures" should be replaced by the words "To harmonize the efforts of States Parties".

Article 2: Definitions [Use of terms]

Subparagraph (a)

2. For subparagraph (a), the word[illegible]g of option 2 should be adopted.

Subparagraph (f)

3. Subparagraph (f) should be worded as follows:

> "(f) 'Foreign public official' shall mean any public official, in the sense of subparagraph (a) of this article, performing any public function for a foreign State."

Subparagraph (g)

4. In the interest of following an approach to defining the terms in the revised draft United Nations Convention against Corruption that is consistent with the

* A/AC.261/8.

V.02-56385 (E)

approach followed in the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I), the text in square brackets in subparagraph (g) should be deleted.

Subparagraph (m)

5. For subparagraph (m), the wording proposed by Azerbaijan (A/AC.261/L.7) should be adopted.

Article 3: Scope of application

Paragraph 1

6. In paragraph 1, the word "other" should be inserted before the words "criminal acts".

Article 4 bis [...]:

7. Article 4 bis should be deleted.

Article 5: [National] preventive anti-corruption policies

Paragraph 5

8. Paragraph 5 should be deleted.

Paragraph 6

9. The last sentence of paragraph 6 should be deleted since it imposes severe limits on the forms of cooperation between States Parties, restricting them to participation in international projects. The deletion of that sentence would also be consistent with the sense of article 4, entitled "Protection of sovereignty".

Article 5 bis: Anti-corruption bodies

Paragraph 1

10. Paragraph 1 should be amended to read as follows:

> "1. Each State Party shall, in accordance with its domestic legal system and other considerations, establish [improve] its specialized bodies for preventing, identifying and curbing various forms of corruption."

Article 6: Public sector

Paragraph 3

11. Paragraph 3 of article 6 should be inserted in article 7 as paragraph 6 bis.

Article 7: Code of conduct for public officials

New paragraph 6 bis

12. Paragraph 3 of article 6 should be inserted in article 7 as paragraph 6 bis.

Article 8: Public procurement and public financial management

Paragraph 5

13. Paragraph 5 of article 8 should be inserted in chapter III, entitled "Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement".

Article 19: Criminalization of corruption involving a public official

14. The wording of option 1 should be adopted.

Article 19 bis: Criminalization of corruption involving a foreign public official

15. The wording of option 3 should be adopted; it corresponds to article 2 of the Council of Europe Criminal Law Convention on Corruption.[1]

Article 20: Complicity, instigation or attempt

16. The wording of option 2 should be adopted.

Title

17. The title of the article should be "Complicity or attempt".

Article 21: Trading in influence

18. The wording of option 1 should be adopted; it corresponds to article 12 of the Criminal Law Convention on Corruption.

Article 22: Misappropriation of property by a public official

19. The wording of option 2 should be adopted.

New paragraph 2

20. The following text, taken from article 28, should be inserted at the end of option 2:

> "2. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the soliciting, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other improper benefits or in quantities exceeding those established by law, as a tax or contribution, surcharge, revenue, interest, salary or remuneration."

Article 23: Concealment

21. Article 23 should be amended to read:

> "Each State Party shall adopt such legislative measures as may be necessary to establish as criminal offences, when committed intentionally, acts aimed at the concealment, [retention,] possession or transmission of movable property or funds or the serving as an intermediary in the transmission [or retention] of such property or funds, when the person involved is aware that

such movable property or funds are the result of one of the offences established in accordance with this Convention."

Article 24: Abuse of functions

22. The wording of option 1 should be adopted.

23. The word "official" should be inserted after the words "the abuse of his or her" and after the words "in the discharge of those".

Title

24. The title of article 24 should be amended to read "Abuse of official functions".

Article 25: Unlawful enrichment

25. Subparagraph (B) of option 4 should be deleted, so that the article reads as follows:

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the systematic or methodical illicit enrichment of a public official by financial proceeds obtained through a series or combination of corrupt acts as defined in articles [...] of this Convention, penalties for which may vary according to the gravity of the offence, and as may be determined by the participating States."

Article 26: Use of classified or confidential information

26. The wording of option 2 should be adopted.

Article 27: Diversion of property

27. Article 27, entitled "Diversion of property", should be deleted.

Article 28: Improper benefits

28. Article 28, entitled "Improper benefits", should be deleted.

Article 29: Other criminal offences

29. Article 29, entitled "Other criminal offences", should be deleted.

Article 30: Equivalence of sanctions

30. Article 30, entitled "Equivalence of sanctions", should be deleted.

Article 31: Enhancement of sanctions

31. The text of article 31 should read as proposed in document A/AC.261/L.41/Add.1.

Article 32: Criminalization of corruption in the private sector

32. The proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) should be adopted, whereby paragraph 1 of option 1 should be placed after

article 19 bis, while paragraph 2 should be considered in conjunction with the article on complicity.

Article 33: Criminalization of money-laundering of proceeds of corruption

33. The wording of option 3 should be adopted, as it is closest to the wording of article 6 of the United Nations Convention against Transnational Organized Crime. Moreover, the provisions of paragraph 2 (b) of option 3 would apply to all offences established as such in accordance with the provisions of the Convention and not merely to certain kinds of offences as in option 5.

Article 34: Account offences

34. The words "in order to commit, conceal or disguise the offences referred to in articles [...] of this Convention" should be inserted after the words "when committed intentionally", so that the text is more similar to article 14 of the Criminal Law Convention on Corruption.

Article 36: Measures against corruption

35. The wording of option 2 should be adopted, as it is closest to article 9 of the United Nations Convention against Transnational Organized Crime.

Paragraph 1

36. Paragraph 1 of option 2 should refer not to a specific article of the Convention but to the Convention as a whole. The words "set forth in article [...] [Measures against money-laundering] of this Convention" should thus be replaced by the words "set forth in this Convention".

Article 38: Liability of legal persons

37. The wording of option 3 should be adopted, as it is the closest to article 10 of the United Nations Convention against Transnational Organized Crime.

Notes

[1] *European Treaty Series*, No. 173.